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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

JOHN CALVERT et al.,

Plaintiffs and Appellants,

v.

RANDALL WOLF,

Defendant and Respondent.

A140405

(City & County of San Francisco  
Super. Ct. No. CGC-13-531227)

Appellants John and Tammy Calvert appeal from an order granting respondent Randall Wolf’s motion to quash service of summons for lack of personal jurisdiction.<sup>1</sup> The Calverts contend Wolf had the necessary minimum contacts with California to warrant the exercise of personal jurisdiction over him. In the circumstances of this case, we agree and, therefore, reverse the trial court’s order.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

John was a professional magician, and his wife, Tammy, worked as his professional assistant. Wolf is a surgeon who has lived in Ohio and Indiana and has a medical practice in Ohio. Magic is Wolf’s hobby, and he performs stage magic and collects magic memorabilia. This case arises out of the parties’ contract for Wolf to buy a magic show called “Magicarama” from the Calverts.

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<sup>1</sup>In the interests of brevity, we will refer to John Calvert and Tammy Calvert individually by first name only. No familiarity or disrespect is intended. In addition, although the Calverts’ opening brief reports that John died after this case was initiated, we retain the original case title because we have not received a request for substitution. (See *Konig v. Fair Employment & Housing Com.* (2002) 28 Cal.4th 743, 745–746, fn. 3.)

In May 2007, John wrote a letter to Wolf regarding the “transfer of ownership” from the Calverts to Wolf of Magicarama for \$100,000. The magic show comprised “Illusions, Magic Props, Tricks, Dialogue, Music, Style of Presentation and Scenery,” backdrops, paintings, and a cargo trailer. The parties also contemplated the Calverts would teach Wolf the tricks of Magicarama, and their correspondence suggests the parties understood California was a possible location for that training. John wrote, “We will need to spend time together at your convenience. I’m looking forward to the Big Show we will do together. We can also do a small show at the Magic Castle [in California] if you wish.” Wolf then handwrote at the end of the document, “You have offered to spend time with me and my family to ‘learn’ the show, which will be arranged. Looking forward to seeing you in Los Angeles[.]”

John, Tammy, and Wolf all signed the May 2007 letter.

In May 2013, the Calverts filed a complaint against Wolf in San Francisco asserting causes of action for breach of contract and elder abuse. Relying upon the May 2007 letter as the parties’ written agreement, the Calverts alleged they performed all their obligations under the agreement as they delivered their entire Magicarama show (with the exception of a few props) to Wolf at his home in Ohio in 2008 and “personally assisted . . . Wolf and his family to ‘learn’ the Magicarama show.” Wolf allegedly breached the agreement in May 2010 by notifying the Calverts he would not pay the remainder of his payment obligation after he had paid them only \$37,000. (The second cause of action for elder abuse is based entirely on the allegations of breach of contract. )

Wolf was served the summons and complaint at a hospital in Indiana. In August 2013, Wolf moved to quash the service of summons on the grounds the court lacks personal jurisdiction over Wolf and, alternatively, California is an inconvenient forum. In a supporting declaration, Wolf stated he has never done business in California and he owns no real or personal property in California. Wolf met the Calverts because of his interest in magic, and they had been guests in his home in Ohio several times prior to 2007. He received the May 2007 letter setting forth the purchase agreement addressed to his home in Ohio, and he signed the letter in Ohio. Later, he saw the items constituting

Magicarama, which were stored in a trailer at the Calverts' house in Bowling Green, Kentucky. Wolf acknowledged he twice visited and assisted John in the performance of a magic show at the Magic Castle, located in Hollywood, California, but he stated, "None of the Magic delivered to me was part of either show."

In opposition to Wolf's motion, Tammy submitted a declaration stating John wrote the May 2007 letter at their home in Palmdale, California, and they signed the document in California. After Wolf signed the document, he returned it to the Calverts by mailing it to their address in California. Tammy disputed Wolf's description of his activities at the Magic Castle. She stated that, on three separate occasions (not two), the Calverts instructed Wolf on how to perform Magicarama at the Magic Castle. (Specifically, they taught him the "Buzz-Saw, My Lady's Boudoir and John's famous Cigarette Dropper manipulation.") Further, on one occasion, Wolf asked John if he could become a member of the Magic Castle, and John "got this done for him very fast."<sup>2</sup>

The Calverts requested the court take judicial notice of (1) "internet blogs implicitly posted by . . . Wolf," (2) Wikipedia postings, and (3) "ZoomInfo's online business people directory." They relied on this website information to argue Wolf used his membership in the Magic Castle and his connection to John to market his heart surgery practice in Indiana and Ohio. Wolf opposed the request for judicial notice, and the trial court did not expressly rule on it.

In his reply, Wolf acknowledged he "participated in training" in California but asserted the location of the training sessions was dictated by the location of the Calverts. He argued he "did not *purposefully* establish minimum contacts with California, but was required to do so based upon the location of the Calverts." (Some italics added, underscoring and capitalization omitted.)

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<sup>2</sup>The Calverts' attorney, an avid hobbyist magician himself, filed a supporting declaration stating the Magic Castle is a prestigious private club and, to become a magician member of the Magic Castle, a person must demonstrate proficiency as a magician and be sponsored by a member.

The trial court granted Wolf’s motion to quash finding as follows: “ ‘[The Calverts] have not shown by a preponderance of the evidence that [Wolf] has sufficient minimum contacts with California to support personal jurisdiction. [The Calverts] . . . only showed a one-time purchase of a magic show and three trips to California for training purposes. This is a one-time transaction, and not on-going business dealings.’ ”

The Calverts timely appealed the court’s order.

## **II. DISCUSSION**

### **A. General Principles of Personal Jurisdiction**

California courts may exercise personal jurisdiction on any basis consistent with the federal and state constitutions. (Code Civ. Proc., § 410.10.) “The exercise of jurisdiction over a nonresident defendant comports with these Constitutions ‘if the defendant has such minimum contacts with the state that the assertion of jurisdiction does not violate “ ‘traditional notions of fair play and substantial justice.’ ” ’ ” (*Pavlovich v. Superior Court* (2002) 29 Cal.4th 262, 268 (*Pavlovich*)). “[T]he minimum contacts test asks ‘whether the “quality and nature” of the defendant’s activity is such that it is “reasonable” and “fair” to require him to conduct his defense in that State.’ [Citation.] The test ‘is not susceptible of mechanical application; rather, the facts of each case must be weighed to determine whether the requisite “affiliating circumstances” are present.’ ” (*Snowney v. Harrah’s Entertainment, Inc.* (2005) 35 Cal.4th 1054, 1061 (*Snowney*)).

Personal jurisdiction may be either general or specific. (*Snowney, supra*, 35 Cal.4th at p. 1062.) In this case, the Calverts do not claim Wolf is subject to the general jurisdiction of California courts, and we therefore consider only whether specific jurisdiction exists. “When determining whether specific jurisdiction exists, courts consider the ‘ “relationship among the defendant, the forum, and the litigation.” ’ [Citation.] A court may exercise specific jurisdiction over a nonresident defendant only if: (1) ‘the defendant has purposefully availed himself or herself of forum benefits’ [citation]; (2) ‘the “controversy is related to or ‘arises out of’ [the] defendant’s contacts with the forum” ’ [citation]; and (3) ‘ “the assertion of personal jurisdiction would

comport with ‘fair play and substantial justice.’ ” ” (Pavlovich, *supra*, 29 Cal.4th at p. 269.)

“ ‘When a defendant moves to quash service of process’ for lack of specific jurisdiction, ‘the plaintiff has the initial burden of demonstrating facts justifying the exercise of jurisdiction.’ [Citation.] ‘If the plaintiff meets this initial burden, then the defendant has the burden of demonstrating “that the exercise of jurisdiction would be unreasonable.” ’ ” (Snowney, *supra*, 35 Cal.4th at p. 1062.)

**B. Standard of Review and Evidentiary Issues**

“When the evidence of jurisdictional facts is not in dispute, the issue whether the defendant is subject to personal jurisdiction is a legal question subject to de novo review. [Citation.] When evidence of jurisdiction is in dispute, we accept the trial court’s resolution of factual issues, draw all reasonable inferences in support of the trial court’s order, and review the trial court’s determination of factual issues for substantial evidence. [Citations.] ‘The ultimate question whether jurisdiction is fair and reasonable under all of the circumstances, based on the facts which are undisputed and those resolved by the court in favor of the prevailing party, is a legal determination warranting our independent review.’ ” (Burdick v. Superior Court (2015) 233 Cal.App.4th 8, 17.)

The Calverts contend the standard of review is purely de novo because there is no conflicting evidence. The trial court found Wolf took three trips to California for training purposes, and they do not challenge this factual finding, only its legal significance. Wolf, on the other hand, argues the appropriate standard of review is substantial evidence because the Calverts rely on asserted facts in addition to the three training trips and these additional asserted facts are not supported by the evidence.

Our review of the record shows that some of the evidence is disputed. There is a minor dispute about whether Wolf trained with the Calverts at the Magic Castle in California two or three times. The trial court found there were three training sessions, and substantial evidence supports this finding. Wolf also disputes the competence of the evidence submitted by the Calverts in their request for judicial notice. The Calverts asked the trial court to take judicial notice of printouts of various internet postings about

Wolf, which Calverts' attorney attempted to authenticate by explaining he "Googled" Wolf's name and he "can only assume [the resulting sites] were either posted by or authorized by Dr. Wolf." We do not consider these documents because there is no evidence Wolf authored or authorized the postings and the truth of such internet postings is not an appropriate matter for judicial notice. (Evid. Code, §§ 1401, 452, subd. (h), 459; *Ragland v. U.S. Bank National Assn.* (2012) 209 Cal.App.4th 182, 194 (*Ragland*); *Searles Valley Minerals Operations, Inc. v. State Bd. of Equalization* (2008) 160 Cal.App.4th 514, 519.) Similarly, we do not consider the information contained in Wikipedia and ZoomInfo postings. (See *Ragland, supra*, at p. 194.) Tammy's statements, however, that the Magic Castle training sessions included training for Magicarama and that John helped Wolf become a member of the Magic Castle are not disputed. Although Wolf initially appeared to assert the Magic Castle training was unrelated to Magicarama, he has since conceded the point.

To summarize, we accept the trial court's finding that Wolf trained with the Calverts in California three times, we do not take judicial notice of any of the printouts of internet postings, and we accept the undisputed evidence that the training at the Magic Castle related to Magicarama and that John helped Wolf become a member of the Magic Castle. We independently consider the question of personal jurisdiction based on the trial court's factual finding and the undisputed evidence.

### ***C. Specific Jurisdiction***

Based on the principles described above, California may exercise jurisdiction over Wolf only if the evidence shows (1) he purposefully availed himself of the benefits of the state, (2) the controversy is related to or arises out of Wolf's contacts with California, and (3) assertion of personal jurisdiction would not offend notions of fair play and substantial justice. (See *Pavlovich, supra*, 29 Cal.4th at p. 269.) We conclude specific jurisdiction exists in this case.

#### ***1. Purposeful Availment***

The "purposeful availment" requirement "ensures that a defendant will not be haled into a jurisdiction solely as a result of 'random,' 'fortuitous,' or 'attenuated'

contacts, [citations] or of the ‘unilateral activity of another party or a third person.’ ”  
(*Burger King Corp. v. Rudzewicz* (1985) 471 U.S. 462, 475, fn. omitted (*Burger King*).)  
“The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State. The application of that rule will vary with the quality and nature of the defendant’s activity, but it is essential in each case that there be some act by which the defendant purposefully avails itself of *the privilege of conducting activities* within the forum State, thus invoking the benefits and protections of its laws.” (*Hanson v. Denckla* (1958) 357 U.S. 235, 253, some italics added.)

In this case, Wolf purposefully availed himself of the privilege of conducting activities within California by voluntarily traveling to the Magic Castle in California to receive training on Magicarama on three separate occasions. Magicarama was the subject of the contract the Calverts claim Wolf breached, and training on the tricks of Magicarama was an element of the contract. Thus, Wolf’s contacts cannot fairly be described as random, fortuitous, or attenuated in relation to the Calverts’ lawsuit.

Further, personal jurisdiction over a nonresident defendant does not offend the Constitution when the lawsuit is “based on a contract which had substantial connection with that State.” (*McGee v. International Life Ins. Co.* (1957) 355 U.S. 220, 223.) “[W]ith respect to interstate contractual obligations, [the Supreme Court has] emphasized that parties who ‘reach out beyond one state and create continuing relationships and obligations with citizens of another state’ are subject to regulation and sanctions in the other State for the consequences of their activities.” (*Burger King, supra*, 471 U.S. at p. 473.) Here, Wolf mailed the contract to the Calverts in California, and the contract between Wolf and the Calverts created a continuing obligation insofar as the Calverts promised to train Wolf on the tricks of the magic show. Subsequently, part of the performance of the contract occurred in California when Wolf received training at the Magic Castle. These are sufficient facts to show the contract had a substantial connection with California.

We recognize that a nonresident's contract with a forum resident *by itself* does not automatically establish sufficient minimum contacts to the forum state. (*Burger King, supra*, 471 U.S. at p. 478; *Hunt v. Superior Court* (2000) 81 Cal.App.4th 901, 906–907 (*Hunt*).) Wolf cites *Hunt* for the proposition that an out-of-state resident's single purchase from a California vendor of goods for delivery out of state is insufficient to establish personal jurisdiction. (*Hunt, supra*, p. 906.) Wolf's activities in California, however, involved more than entering a purchase contract with California residents. He traveled to California multiple times for training on Magicarama.

## **2. *Relatedness of the Controversy to Forum Contacts***

The California Supreme Court has “adopted a ‘substantial connection’ test and [has] held that the relatedness requirement is satisfied if ‘there is a substantial nexus or connection between the defendant’s forum activities and the plaintiff’s claim.’ ” (*Snowney, supra*, 35 Cal.4th at p. 1068.) “A claim need not arise directly from the defendant’s forum contacts in order to be sufficiently related to the contact to warrant the exercise of specific jurisdiction.” (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 452.) “Indeed, ‘ “[o]nly when the operative facts of the controversy are not related to the defendant’s contact with the state can it be said that the cause of action does not arise from that [contact].’ ” ” (*Snowney, supra*, at p. 1068.)

On three separate visits to California, Wolf received a benefit of the parties’ contract by training with the Calverts on tricks of Magicarama. Because an element of the contract was performed in California, we conclude the Calverts’ contract claim is sufficiently related to Wolf’s California activities to warrant the exercise of specific jurisdiction.

## **3. *Fair Play and Substantial Justice***

Finally, we consider whether the assertion of specific jurisdiction is fair. (See *Snowney, supra*, 35 Cal.4th at p. 1070.) “Where a defendant who purposefully has directed his activities at forum residents seeks to defeat jurisdiction, he must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable. Most such considerations usually may be accommodated through means



short of finding jurisdiction unconstitutional.” (*Burger King, supra*, 471 U.S. at p. 477.) In his response, Wolf argues he did not have the requisite minimum contacts with California to permit the assertion of personal jurisdiction. He does not, however, offer other considerations that would render jurisdiction unreasonable. The evidence shows Wolf voluntarily came to California on at least three occasions to learn Magicarama. Further, he sought membership with the Magic Castle, which is located in California. These facts do not suggest it would be unfair or unreasonable for a California court to exercise jurisdiction over Wolf in a lawsuit related to the purchase of Magicarama. Therefore, we conclude Wolf is subject to specific jurisdiction in California.

### **III. DISPOSITION**

The order granting Wolf’s motion to quash is reversed. Appellants are awarded costs on appeal.

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McGuiness, P.J.

We concur:

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Pollak, J.

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Jenkins, J.